



POLICE DEPARTMENT

October 15, 2009

MEMORANDUM FOR: Police Commissioner

RE: Police Officer Graziano Cillo
Tax Registry No. 928075
Queens Court Section
Disciplinary Case No. 84221/08

The above-named member of the Department appeared before the Court on August 18, 2009, charged with the following:

1. Said Police Officer Graziano Cillo, while assigned to the 109th Precinct, while on duty, on or about March 27, 2008, at approximately 0400 hours, in the vicinity of 41st Avenue and Union Street, Queens County, did wrongfully engage in conduct prejudicial to the good order, efficiency and discipline of the Department, to wit: said Officer was involved in a verbal and physical altercation with his partner, identity known to the Department.

P.G. 203-10, Page 1, Paragraph 5 – PUBLIC CONTACT- PROHIBITED
CONDUCT GENERAL REGULATIONS

The Department was represented by Michelle Alleyne, Esq., Department Advocate's Office, and the Respondent was represented by Craig Hayes, Esq.

The Respondent, through his counsel, entered a plea of Not Guilty to the subject charge. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

The Respondent is found Not Guilty.

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SUMMARY OF EVIDENCE PRESENTEDThe Department's Case

The Department called Lieutenant Gary Nardo and Sergeant Kevin McCaffrey as witnesses.

Lieutenant Gary Nardo

Nardo had been a member of the Department for 26 years. He was currently assigned to Viper 6, where he was in charge of the day-to-day operation of the unit. On March 27, 2008, he was assigned as the Platoon Commander of the first platoon, 2300x0745, in the 109 Precinct.

Nardo testified that at approximately 3:55 a.m. he received a phone call from the Respondent. The Respondent was normally assigned to, Nardo believed, the 111 Precinct. Nardo stated that the 109 Precinct had experienced an increase in grand larceny auto (GLA) cases, so some other commands' GLA units were assigned for that night to the 109 Precinct.

Nardo described the Respondent as "a little upset, a little excited also apologetic." The Respondent said that he had been verbally and physically "abused," but was not injured. The Respondent said that his partner, Police Officer Richard Llorens, took two "swings" at the Respondent and missed. The Respondent said that Llorens pushed and shoved him, called him names, and challenged him to a fight. The Respondent came out of the car, and Llorens pushed and shoved him again in an attempt to get him back into the car. The Respondent did not indicate to Nardo "whether or not he was able to punch or defend himself" against Llorens.

Nardo testified that the Respondent was "a little confused" and did not know where he was. Nardo ordered him not to get back in the car with Llorens, and to walk to the nearest

intersection and wait for a supervisor to pick him up. A couple of minutes later, Sergeant Kevin McCaffrey called, and Nardo told him to bring the Respondent to the 109 Precinct station house.

About seven to nine minutes passed between the Respondent's phone call until both he and Llorens were back at the 109 Precinct station house. Nardo did not observe any injuries on the Respondent and he was not disheveled. His demeanor was "quiet, calm as opposed to the phone call." Llorens' demeanor was similar and he did not appear disheveled either.

On cross-examination, Nardo testified that the Respondent did not tell him that he did not make contact with Llorens. "I didn't offer it and there was nothing said." The Respondent added that he told Llorens he did not want to fight, and said, in substance, "look we can't do this now if you want to do this after work we will do this after work."

On examination by the Court, Nardo testified that the terms used by the Respondent were "why don't we take this up after work" or "this shouldn't be done here."

Sergeant Kevin McCaffrey

McCaffrey had been a member of the Department for 16 years and was assigned to Queens North Auto Larceny. On March 27, 2008, he was assigned within the 109 Precinct to address GLA conditions. Teams from the 111, 112 and 115 Precincts were also operating within the confines of the 109 Precinct.

McCaffrey testified that sometime after 4:00 a.m., he received a radio transmission to contact the desk. Once he did so, he spoke to Nardo, who told him to respond to 41st Avenue and Union Street because a 111 Precinct GLA team had gotten into an altercation. Nardo said McCaffrey was to pick up the Respondent because Llorens had left him there.

McCaffrey arrived at the location about three minutes later. The Respondent was on the northwest corner of 40th Avenue and Union Street as Llorens was pulling back up in the RMP. McCaffrey did not observe any injuries on either officer.

When McCaffrey asked Llorens what happened, he said "he just lost it, he couldn't take it any more he just lost it."

The Respondent told McCaffrey that he and Llorens had gotten into a verbal argument over a command discipline (CD) that Llorens had received about a year prior. The Respondent said that Llorens stopped the RMP, came to the recorder side, pulled the Respondent out, pushed him against the wall and punched him in the face. The Respondent told McCaffrey that "he had to physically push Officer Llorens off him." Llorens then returned to the RMP and left.

McCaffrey described the Respondent as "kind of quiet, kind of withdrawn." When McCaffrey arrived, the Respondent was "a little shaky," standing with his back to a store's rolldown gates.

McCaffrey told Llorens to go to the 109 Precinct station house and told Cillo to get into McCaffrey's vehicle. At the station house, "I guess Lieutenant Nardo had informed" Inspector Whalen about what happened. Whalen told McCaffrey to remove the firearms of both Llorens and the Respondent and to bring both to the desk.

On cross-examination, and upon his recollection being refreshed with his Official Department Interview, McCaffrey stated that Llorens told him, in sum and substance, "shit just erupted and he just lost it." McCaffrey described Llorens as calm, "but you can tell he was . . . a little riled up."

McCaffrey agreed that the Respondent told him that he answered Llorens, in substance, "we can't do this here, we can't do this." The Respondent told McCaffrey he was struck in the jaw by Llorens.

McCaffrey agreed that an assignment to Auto Larceny was step up from patrol for most police officers. Rather than having to answer the radio, “you are pretty much on your own to make your own activity.” Officers in Auto Larceny have an opportunity to make “quite a bit of arrests” and possibly more overtime.

The Respondent’s Case

The Respondent testified on his own behalf.

The Respondent

The Respondent was appointed to the Department in July 2001. He had made about 350 arrests. In March 2008, he was assigned to “Auto Larceny Vehicle.” He was selected to go there, “then it was a formality an application.”

The Respondent testified that he and Llorens had worked together in the past and had been steady partners for about two weeks. The Respondent described this fortnight as “a nightmare I was basically antagonized to the point I was about to request a transfer.” Llorens would “pick any topic and attack me on it. If I didn’t argue about the topic with him he would tell me I wasn’t a conversationalist.” For example, the Respondent was a personal trainer and tried to “eat properly,” whereas Llorens would eat pizza at four o’clock in the morning. When the Respondent remained silent, Llorens would say, “[Y]ou know I can [eat] pizza what is wrong with that do you think you are healthier than me”? Another time, Llorens asked if the Respondent would have his wife breastfeed when they had kids, and the Respondent said yes. Llorens responded, “[M]y kids weren’t breast fed what are you saying my kids are unhealthy”? The Respondent asserted, “He was trying to look for a fight.”

On March 27, 2008, the Respondent was working in the 109 Precinct. His partner was Llorens and they were on uniform patrol in an RMP. Llorens "seemed agitated" because he believed his supervisors had a grudge against him for involvement in an Internal Affairs Bureau matter. He was also upset about the sector they were assigned to and felt it had been done on purpose. At one point that night, McCaffrey saw that they were out of sector and reprimanded Llorens.

The Respondent testified that Llorens was "furious" about the reprimand and was "driving around like a maniac," searching for an arrest because he wanted to be off patrol. Llorens also brought up a CD he had received about a year and a half earlier while both were assigned to the 111 Precinct. On that occasion, the Respondent had made an arrest and needed transport for himself and the prisoner. Llorens was assigned to pick them up, and he went about 120 miles per hour back to the station house. The duty captain, Deary, witnessed this and asked the Respondent if he thought Llorens was driving at excessive speeds. The Respondent apologized and said he was not paying attention to the speedometer. Deary told the Respondent "get out of my face and go back to process your collar." The Respondent later learned Llorens received a CD.

The Respondent stated that on the night of March 27, 2008, "out of nowhere" Llorens brought up the CD and told the Respondent "I was all about myself and about self preservation," that the Respondent did not "go to bat with me." The Respondent answered that he did not see it that way and offered to speak to Deary about it, but Llorens declined. The Respondent contended that while Llorens was driving, he was leaning over the center console and pointing his finger in the Respondent's face, "screaming at me to the point where he was basically sitting on me." The Respondent was "blocking with my left."

The Respondent told Llorens that Deary had not asked if the Respondent was at fault, and added, “[Y]ou know what if you didn’t want to get in trouble you shouldn’t have broke the law and sped.” The Respondent asserted that Llorens “went crazy” and pulled over, almost onto the sidewalk. Llorens told the Respondent to get out of the RMP. The Respondent said, “[W]hat are you doing, we are the middle of the street, we are in uniform, we have our firearms, . . . I am not doing this here.” The Respondent told Llorens, “[W]e can talk about this, we can handle this, we can deal with this after work.” The Respondent testified that he was trying to “deescalate the insanity.” Llorens responded, “[Y]ou are a pussy, you are all talk, I knew you were all talk.”

The Respondent stated that Llorens pulled the RMP over again. He got out of the vehicle and came to the Respondent’s side. The Respondent asserted that he did not know what Llorens intended, so he unbuckled his seat belt. Llorens “ripp[ed]” the door open and grabbed his right arm. The Respondent contended that he did not want “to get punched in the face where I can’t defend myself,” so as Llorens pulled him out he stood up.

The Respondent testified that Llorens threw him “pretty hard” against the right rear door of the RMP. The Respondent “was able to just block him and try to hold his hands and tell him to stop.” The Respondent “basically . . . would grab his hands on my chest and then I would break the grab and he would shove me again.” Llorens did this “a decent amount of times.” He would grab the Respondent, “punch forward and catch me on the sides.” He had his fists clenched and his arms bent. Llorens was holding the Respondent’s vest and trying to throw him around. At one point Llorens made contact with the Respondent’s face. The Respondent accused Llorens of punching him, but he denied it.

The Respondent testified that he and Llorens ended up away from the car, circling in the street. Llorens was saying, “[Y]ou are a bitch, you are a pussy, you are pretty much all talk.”

The Respondent answered “don’t do this, we can’t do this, we have guns on us, what if people are watching this is not the time.”

The Respondent asserted that once Llorens realized he was not going to “take the bait” and fight with him, he told him to “get the fuck back in the car bitch.” The Respondent refused. Llorens repeated himself, then sped off in the RMP. The Respondent’s bag, cap and radio were all inside the vehicle.

The Respondent testified that he called the telephone switchboard for a ride. He spoke to Nardo, whose testimony was “[j]ust about” right. Nardo told him to wait and McCaffrey arrived at the scene. Llorens had just returned when McCaffrey got there.

McCaffrey told the Respondent to get in the vehicle, and asked him some questions on the way back. The Respondent denied telling McCaffrey that he wanted to fight Llorens, or that he implied this in his statements to Llorens. The Respondent asserted that “basically to defuse the situation and calm him down,” he told Llorens “lets go back to the command we can talk about this, we can handle this a different way.” The Respondent said that he was hoping Llorens would cool off. He denied saying “really along those words lets take care of it after work, it was more like we can deal with this another way, we can deal with this in the locker room. . . . [W]e can handle this at the precinct, we can talk about this in the locker room, we didn’t need to do it in public.”

The Respondent denied ever punching or kicking Llorens, taking him down to the ground, putting him in a chokehold, or doing anything “offensive other than defensive.”

On cross-examination, the Respondent admitted that while he was thinking about asking for a transfer during his time with Llorens, he had not yet asked for one when the incident occurred.

The Respondent asserted that he did not have a chance to make a radio transmission that he felt threatened. He stated that he was more concerned that Llorens was going to strike him.

The Respondent admitted that once Llorens stopped the RMP and came around to the passenger side, he should have locked the door first, "but I was panicking."

The Respondent testified he kept backing up as Llorens was grabbing him, but Llorens "kept going forward, he kept aggressing." He denied pushing Llorens, but admitted, "It depends on the terminology of push. I didn't push him, aggress, I pushed him off me falling backwards . . . pushed his hands off my chest." The Respondent agreed that he "physically touched his body to push him shove him away." The Respondent agreed, as he told McCaffrey, that he "physically had to push Officer Llorens off of you that you had to defend yourself."

FINDINGS AND ANALYSIS

The Respondent is charged with conduct prejudicial to the Department by becoming involved in a verbal and physical altercation with his partner, Police Officer Llorens. Specifically, the Respondent is accused of getting into a physical fight with Llorens while both were in uniform and on patrol in an RMP.

The Department did not produce Llorens to testify; he is awaiting trial on the identical charges as faced by the Respondent, as well as additional, unrelated charges. The only evidence of Llorens' conduct came from the Respondent's testimony and Llorens' hearsay statements admitted through Lieutenant Nardo and Sergeant McCaffrey. Thus, the Court is left with the Respondent's version of events, in which he portrayed the incident as one of self-defense. The Respondent stated that Llorens initiated a verbal argument while driving the RMP, then stopped the patrol car. Llorens then came to the recorder side of the vehicle and pulled the Respondent

out. The Respondent had already taken his seat belt off. Llorens challenged the Respondent to a fight, grabbing him. The Respondent broke free by grabbing Llorens' hands and pushing him off. Llorens then got back in the RMP and drove off.

Under the Respondent's version of events, Llorens was the initial and continuing aggressor. In fact, Llorens was the only aggressor. According to Nardo, the Respondent said that he told Llorens, in sum and substance, "look we can't do this now if you want to do this after work we will do this after work." Nardo described the Respondent on the phone as upset and excited but apologetic. McCaffrey gave a description of a dejected Respondent when he arrived on scene. In light of those accounts and the Respondent's explanation as to his meaning, the Court credits his testimony that his statements to Llorens were meant to stop the public fight and were not an invitation to continue it after work. It shows that the Respondent was not simply acting in self-defense but took affirmative and reasonable steps to avoid a confrontation.

The only presentation of Llorens' side of the story was a few of his statements made to McCaffrey. This limited version of Llorens' account seems to indicate that even the Department does not accept it. Moreover, McCaffrey noted that Llorens was still upset after the incident.

While the Court agrees that it is utterly unacceptable for two members to have a fistfight while in uniform on the street, the Department failed to prove that the Respondent did anything besides being the member whom Llorens pushed and shoved, challenging him to a fight. The two cases referred to by the Department, *Disciplinary Case Nos. 77052/01 & 77053/01*, were both Guilty pleas. Thus, the specific facts under which each member was held responsible are not known, beyond the fact that they were involved in an on-duty physical altercation with each other that resulted in minor injuries.

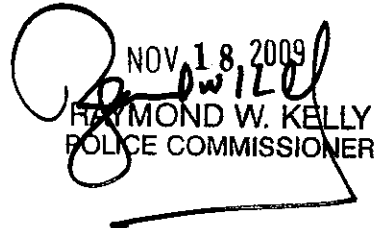
Under these circumstances, the Department failed to prove that the Respondent's conduct was contrary to the good order, efficiency and discipline of the Department. Accordingly, the Court finds the Respondent Not Guilty.

Respectfully submitted,



David S. Weisel
Assistant Deputy Commissioner – Trials

APPROVED



NOV 18 2009
RAYMOND W. KELLY
POLICE COMMISSIONER